



Advisory Commission on State Emergency Communications

January 29, 1996

RECEIVED

FEB 01 1996

FILE # ML-38537-96

I.D. # 38537

Opinion Committee

RQ-874

The Honorable Dan Morales
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Re: Attorney General Opinion Request on Indemnification of Various
Individuals Involved in Implementing and Operating Poison Control
Centers and the Poison Control Center Telecommunications Network

Dear General Morales:

The Advisory Commission on State Emergency Communications (ACSEC) requests your official opinion on whether various persons necessarily involved in implementing and operating poison control centers are subject to indemnification. Indemnification by the state under chapter 104 of the Civil Practice and Remedies Code is usually limited to those persons performing service for or on behalf of a "state agency, institution, or department." See, Attorney General Opinion DM-98 (1992). Chapter 777 of the Health and Safety Code designates six regional poison control centers for the state, two of which are otherwise state agencies or institutions, and provides in section 777.007 that "[t]he state shall indemnify a poison control center and an employee of a poison control center under chapter 104, Civil Practice and Remedies Code." (emphasis added)¹

ACSEC, the Texas Department of Health (TDH), and personnel from each of these agencies are involved in various aspects of poison control. Chapter 777 of the Health and Safety Code provides for a coordinating committee on poison control to advise ACSEC and TDH. Most of the eight members of the coordinating committee are appointed by a chief executive officer of a state agency. See, Health and Safety Code, § 777.008.

¹ Your office has previously concluded that a crucial test in determining whether someone is an employee is whether the employer has the right to control the details of the work. See, Attorney General Opinion JM-525 (1986) ("Because the savings and loan commissioner has the right to control the details of the work of conservators, supervisors, and liquidating agents, we conclude that they are employees of the state for purposes of sections 104.001 and 104.008 of the Civil Practice and Remedies Code.").

333 Guadalupe Street

Suite 2-212

Austin, Texas 78701-3942

512-305-6911 V/TDD

512-305-6937 FAX



ACSEC is also responsible for administering the telecommunications requirements for poison control centers and planning, implementing, operating, and maintaining poison control center databases. Health and Safety Code, § 771.051 (a) (1), (7). A poison control center is required by statute to use physicians, pharmacists, nurses, and other professionals, and support personnel trained in various aspects of toxicology and poison control and prevention. Health and Safety Code § 777.004.

The question has arisen, prompted by concerns of the poison control coordinating committee, as to which of the individuals involved in poison control implementation and operation are subject to indemnification. We ask you, therefore, to explain (1) which of these various individuals necessarily involved in poison control implementation and operation are subject to indemnification and (2) what criteria must be met to be considered an employee for purposes of indemnification. Please specifically address (a) whether a letter of agreement or contract is necessary for one to be considered an employee? (b) whether physicians who volunteer their time as consultants would be subject to indemnification? (c) whether specialty consultants would be subject to indemnification (specialty consultants are qualified by training or experience to provide sophisticated toxicology or patient care information in their areas of expertise; examples are herpetologist, botanist, forensic toxicologists, etc.)? and (d) whether the General Services Commission (GSC) (the State agency that administers the TEXAN Network and has expertise in telecommunications) and its personnel would be subject to indemnification if GSC agrees to administer the poison control center telecommunications network for ACSEC?²

Thank you for your attention to this matter. If I can provide any additional information or clarification on this matter to your office, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary A. Boyd", with a long horizontal flourish extending to the right.

Mary A. Boyd
Executive Director

MAB/dm

² It is ACSEC's position that all state governmental entities and personnel involved in providing poison control center services should be subject to indemnification pursuant to Chapter 104 of the Civil Practice and Remedies Code.